

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 22374 of 2005(L)

PETITIONER:

**JOSE THOMAS, AGED 58,
S/O.THOMAS, KOOTTAPPILLIL HOUSE,
KOZHIPILLY P.O., KOTHAMANGALAM,
CIRCLE INSPECTOR EXCISE (RETIRED)
EXCISE CIRCLE OFFICE, MUVATTUPUZHA.**

BY ADV. SRI.ALEXANDER JOSEPH

RESPONDENTS:

- 1. STATE OF KERALA, REP. BY SECRETARY
TO GOVT., PRINCIPAL SECRETARY TO GOVT.,
DEPARTMENT OF FINANCE, GOVT. SECRETARIAT,
TRIVANDRUM.**
- 2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM.**
- 3. ACCOUNTANT GENERAL (A&E),
KERALA, THIRUVANANTHAPURAM.**

BY SPL. GOVT. PLEADER (FINANCE)SRI.MANOJKUMAR for R1 to R3

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.22374/2005 L

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE ORDER NO.VG XE1-23925/03 OF THE HON'BLE HIGH COURT OF KERALA.**
- EXT.P2: COPY OF THE ORDER NO.XE1/15428/99 DTD. 08/12/1999.**
- EXT.P3: COPY OF THE REPRESENTATION DD. 29/11/04 OF THE PETITIONER TO THE 2ND RESPONDENT.**
- EXT.P4: COPY OF THE JUDGMENT IN WP(C) NO.6974/05 DTD. 02/03/05 OF THE HON'BLE HIGH COURT OF KERALA.**
- EXT.P5: COPY OF THE ORDER NO.XE1-12752/05 DTD. 19/05/05 OF THE 2ND RESPONDENT.**
- EXT.P6: COPY OF THE G.O.(P) NO.1016/00/FIN. DTD. 12/07/2000.**

/TRUE COPY/

P.A. TO JUDGE

KSS

ANTONY DOMINIC, J.
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W.P.(C) NO. 22374 OF 2005
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Dated this the 1st day of August, 2007

J U D G M E N T

The prayer in this writ petition is to declare that the petitioner is entitled to monetary benefits w.e.f.16.4.01, consequent on the ratio based Higher Grade extended to him by virtue of Ext.P1 order. According to the petitioner, though the Higher Grade was extended to him w.e.f. 16.4.01, he should have also been given monetary benefits until he retired on 31/5/2002 and that he has been deprived of this benefit by adding a rider to Ext.P1 to the effect that no back arrears shall be admissible and that monetary benefit will accrue only with effect from the date of the order. Petitioner complains that since the order is dated 14/10/2004 and as he had retired as early as on 31/5/2002, virtually the entire monetary benefits have been taken away. Further he makes reference to Ext.P2 order dated 8.12.1999 , wherein according to him monetary benefits were extended to similar beneficiaries of higher grade, who were also given ratio based Higher Grade. Complaining that his representation was

remaining without consideration, he had approached this court by filing WP(C) No.6974/05 and the same was disposed of by Ext.P4 judgment directing consideration of the representation within a time frame. In compliance with the said direction, the request of the petitioner was considered by the 2nd respondent and by Ext.P5 petitioner was informed that in terms of Ext.P6 Government Order, no back arrears are admissible for notional promotion.

2. On behalf of the respondents, in the counter affidavit filed by them, they have contended that with the introduction of ratio based Higher Grade, promotion is common in many departments resulting in payment of huge sums as arrears. It is stated that since payment of arrears has got adverse effect on the ways and means position of the State Government, it was decided to restrict payment of arrears when number of beneficiaries are large and the period involved is long. It is further stated that it is based on the said principle, Government have ordered that monetary benefits be given only with effect from the date of the order and it is the policy of the government that in such cases grant of monetary benefit is restricted from the date of the order.

Counsel for the petitioner contends that the benefit of Higher Grade has been extended not based on Ext.P1, but based on GO(P) No.480/89/Fin. dated 1.11.89 referred to in Ext.P2 and in the absence of any provision in the said order depriving monetary benefits, respondents were not justified in adding a rider to Ext.P1 totally depriving the petitioner all the monetary benefits. I am not in a position to agree with the counsel. The very order extending the benefit is an Executive order and at any time Government is entitled to modify the same. It is stated in the counter affidavit that Government have taken a policy decision taking into account the availability of their limited resources and have decided not to give monetary benefits with retrospective effect, but to give it only from the date of the order. Having regard to the fact that the payment of monetary benefits with retrospective effect has impact on the resources of the Government, Government is always at liberty to take such decisions as is warranted in the circumstances. If such a decision results in the denial of monetary benefits in the case of persons like the petitioner, the same cannot be said to be arbitrary in any manner. I do not find

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any merit in the contentions and I hold that the petitioner is not entitled to monetary benefits consequent on Ext.P1 for the period from 16/4/01 till 31/5/2002. The writ petition lacks merits and it is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp